(4)

(अभियुक्त जेल में है)

समक्ष :- माननीय उच्च न्यायालय ,जबलपुर .

प्रेमलाल आ0 मि न्धु मोची,
आयु 27वर्ष, पेशा-बढ़ई,
निवासी ग्राम-कोलिहापुरी ,
थाना पुलगाँव जिला दुर्ग (म0प्र0).....अपीलार्थी/आरोपी.

:::विरुध्द. ::::

म0प्र0 राज्य ,
द्वारा :- आरक्षी केन्द्र डोंगरगाँव,
जिला- राजनादगाव (म0प्र0).... .....अभियोजन.

::: आपराधिक अपील अंतर्गत धारा-374 (2) दं0प्र0संहिता. ::::

HIGH COURT OF CHHATTISGARH : AT BILASPUR.

Criminal Appeal No.2626 of 1998.

Prem Lal, S/o Mitthu Mochi ... Appellant

Vs.

The State of Madhya Pradesh ... Respondent.

* * * * * *

Judgment

By.Hon.Shri R.S.Garg,J. :

The appellant being aggrieved by the judgment dated 4.9.98, passed in Sessions Trial No.9/98, by the learned Addl.Sessions Judge, Rajanandgaon, convicting the appellant under Section 376 read with Section 511 I.P.C.,sentencing him to undergo R.I. for 5 years and pay fine of Rs.1,000/-, and in default of payment of fine to undergo further S.I. for 3 months, has filed this appeal.

2). The prosecution case in brief is that on 7.5.97, when the Prosecutrix Rambai (P.W.1) was plucking the Tendu leaves, the accused went to her and offered her for sex. The Prosecutrix started abusing the accused on which the accused gagged her mouth and thereafter, fell her on the ground. Before the accused could do anything, the prosecutrix kicked him and the accused ran away from the spot. The prosecutrix Rambai went to the village and informed about the incident to

the villagers, neighbours and to her husband after his arrival. The first information report was immediately lodged and thereafter, the police made investigations. After preparing the spot memo, the statements of the witnesses were recorded and the accused was taken into custody. On completion of the investigation, the challan was filed. As the accused denied the commission of offence, he was put to trial. The learned trial Court after hearing the parties, convicted and sentenced the accused as referred to above.

3). Smt. Gupta, learned counsel for the appellant submits that the solitary testimony of P.W.1 Rambai is not reliable because from the attending circumstances, it would appear that she was telling lies and trying to fix and frame the accused. She also submits that the sentence awarded by the Court below suffers with vice of excessiveness and the sentence deserves to be reduced to the period already undergone.

4). On the other hand, learned counsel for the State has supported the judgment and findings.

5). P.W.1 Rambai has clearly stated in her statement that when she had gone to jungle for plucking Tendu leaves, the accused approached her and offered her for sex and on her refusal, fell her on the ground and tried to commit rape. In her cross-examination, nothing substantial has been brought which could persuade this Court to

dis-credit her testimony. On the aspect that she had immediately narrated the incident to the villagers she is supported by P.W.7 Rambati, P.W.6 Devkibai, P.W.2 Ankulram and others. Her husband Radhelal- P.W.3 has also supported her on the material aspects.

6). After going through the statements of Prosexutrix Rambai (P.W.1) and others, I am unable to hold that the Court below erred in recording the findings against the appellant. On the merits, I am unable to hold in favour of the appellant.

7). Learned Court below on the question of sentence, considered the question of award of sentence in paragraphs 38,39,40 and 41. Though, it observed that the minimum awardable sentence under Section 376 I.P.C. is 7 years, but as the sentence upto 10 years could be awarded, therefore, for an attempt sentence of R.I. for 5 years could be awarded to the appellant. In my opinion, the learned Court below ~~beyond this~~, should have ~~been~~ given some special reasons. When the law provides for award of minimum sentence, then, the Court is obliged to award minimum sentence and it also has jurisdiction to award the sentence over and above the minimum sentence, but for exercising such powers, the Court must assign some good reasons. In the present case, the Court has simply said that as the sentence upto 10 years R.I. can be awarded, award of sentence of 5 years R.I. to the accused would be justified. In my opinion, the said approach is not proper.

I propose to interfere on the question of award of sentence. The substantive jail sentence is reduced to 3½ years which would be half of the minimum awardable sentence for an offence under Section 376 I.P.C. Fine amount and the default sentences are maintained.

8). The appeal on the question of sentence is allowed.

Sd/-
R.S. Garg
Judge
4-4-2001.

/Subbu/.